

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION**

**TYSON FRESH MEATS, INC.,**

**Plaintiff,**

**V.**

**THOMAS J. MILLER, in his official capacity as Attorney General of the State of Iowa,**

**Defendant.**

**Case No.** \_\_\_\_\_

**COMPLAINT FOR  
DECLARATORY AND  
PROSPECTIVE INJUNCTIVE  
RELIEF PURSUANT TO 42 U.S.C.  
§ 1983**

Plaintiff Tyson Fresh Meats, Inc. (hereinafter "Tyson"), states the following as its Complaint for Declaratory and Prospective Injunctive Relief Pursuant to 42 U.S.C. § 1983 against defendant Thomas J. Miller, Attorney General of the State of Iowa, in his official capacity:

## NATURE OF THE LAWSUIT

1. This suit is brought by Tyson for a declaration that Iowa Code Chapter 202B on its face, in its purpose, and in its effect violates the dormant Commerce Clause, Article I, Section 8, Clause 3, of the Constitution of the United States. Tyson seeks permanent, prospective injunctive relief to prevent the enforcement of Iowa Code Chapter 202B.

## THE PARTIES AND THEIR INTERESTS

2. Tyson is a Delaware corporation with its principal place of business in Arkansas. Tyson owns and operates facilities across the State of Iowa and maintains substantial business operations in the State of Iowa.

3. Iowa Code Chapter 202B prohibits a “processor” from either “directly” or “indirectly” engaging in certain activities including, but not limited to, owning, operating, financing or controlling a swine operation within the state of Iowa or contracting with Iowa producers for the care and feeding of swine in Iowa.

4. As broadly defined in Iowa Code Chapter 202B, the Attorney General of the State of Iowa has taken the position that Tyson is a “processor.”

5. Iowa Code Chapter 202B prevents Tyson from aligning various aspects of swine production, nutrition and management services, and swine processing in order to facilitate the development of consistent, high quality, and traceable products to meet the demands of consumers and retailers, both national and international.

6. Iowa Code Chapter 202B also prevents Tyson from contracting with Iowa producers for the care and feeding of swine in the State of Iowa, removing Tyson from competition with others in the business of contract swine production, to the detriment of Tyson, Iowa swine producers, and, ultimately, consumers of pork products in Iowa, across the nation and around the world.

7. Tyson desires to maintain its business operations in the State of Iowa, maintain the volume of pork processed at its Iowa plants, and engage in certain activities currently prohibited by Iowa Code Chapter 202B including, but not limited to, contracting with Iowa producers for the care and feeding of swine owned by Tyson.

8. Thomas J. Miller is the Attorney General of Iowa (the “Attorney General”). The Attorney General, as the chief legal officer of the State of Iowa, is

charged with undertaking or supervising the enforcement of Iowa Code Chapter 202B on behalf of the State of Iowa.

### **JURISDICTION AND VENUE**

9. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331, and by 28 U.S.C. § 1343(3)-(4), in that this suit complains of the denial of federal constitutional rights.

10. Authority to order a reasonable award of attorney's fees and costs is conferred upon this Court by 42 U.S.C. §§ 1983 and 1988.

11. Declaratory relief is proper in this case of actual controversy under 28 U.S.C. § 2201(a).

12. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1)-(2) because the Attorney General resides in this judicial district and because a substantial part of the events giving rise to these claims occurred in this judicial district.

### **COUNT I**

#### **Dormant Commerce Clause (Discrimination)**

13. The allegations contained in Paragraphs 1 through 12 are incorporated by reference as if fully set forth herein.

14. Pursuant to Article I, Section 8, Clause 3 of the Constitution of the United States, "Congress shall have Power .... [t]o regulate Commerce ... among the several states."

15. The dormant Commerce Clause prohibits a state from discriminating against interstate commerce by adopting isolationist or protectionist trade policies that

treat in-state and out-of-state interests differently to the benefit of in-state interests and at the expense of out-of-state interests.

16. Unlawful discrimination may occur in one of three possible forms: (a) the text of a statute may facially discriminate against out-of-state interests; (b) a statute may have a discriminatory purpose; and (c) a statute may have a discriminatory effect. Iowa Code Chapter 202B is discriminatory in all three manners and must be struck down as unconstitutional.

#### **Iowa Code Chapter 202B is Facially Discriminatory**

17. Iowa Code Chapter 202B, on its face, exhibits a preference for in-state interests over out-of-state interests and is, therefore, facially discriminatory and unconstitutional.

18. Iowa Code Chapter 202B applies to “processors,” including Tyson, producing beef or pork products that have a total annual wholesale value of eighty million dollars or more.

19. On information and belief, no “processor” regulated by Iowa Code Chapter 202B is an Iowa citizen or is headquartered in the State of Iowa.

20. Iowa Code Chapter 202B carves out an exemption for, and does not apply to, “qualified processors,” which, as defined by the Chapter, refers to processors owned by swine producers, a predominantly local interest.

21. Thus, Iowa Code Chapter 202B restricts, and unlawfully targets, only swine ownership and control by relatively large out-of-state processors, including Tyson.

22. This facial preference in favor of local interests is unconstitutional and must be struck down

**Iowa Code Chapter 202B has a Discriminatory Purpose  
and was Adopted with a Discriminatory Purpose**

23. Iowa Code Chapter 202E also has a discriminatory purpose and was adopted with a discriminatory purpose.

24. In determining whether or not a state adopted a statute with a discriminatory purpose, courts look to direct and indirect evidence, including: (a) statements by lawmakers; (b) the sequence of events leading up to the statute's adoption, including irregularities in procedure used to adopt the law; (c) the state's consistent pattern of disparately impacting members of a particular class of persons; (d) the statute's historical background, including any history of discrimination by the state; and (e) the statute's use of highly ineffective means to promote the legitimate interest asserted by the state.

25. As was well documented and described in Smithfield Foods, Inc., Murphy Farms, LLC, and Prestage-Stoecker Farms, Inc. v. Miller, No. 4:02-CV-90324, the record related to Iowa Code Chapter 202B and its predecessor statutory sections reveals: (a) numerous statements by lawmakers revealing that the purpose of Chapter 202B was to prevent ownership and control within the swine industry by out-of-state meat processors, including businesses such as Tyson, purportedly to protect independent Iowa producers; (b) that the sequence of events leading up to the adoption of Chapter 202B reflects its purpose of discriminating against out-of- state processors, including Tyson; (c) that the State of Iowa has a long and consistent pattern of targeting meat processors, which

necessarily includes Tyson, for discriminatory regulation; and (d) that even to the extent the State of Iowa has purported goals to be addressed by such regulations, Chapter 202B is a highly ineffective means to address those purported goals.

26. Iowa Code Chapter 202B clearly has a discriminatory purpose, was adopted with a discriminatory purpose, and based thereon is unconstitutional and must be struck down as unlawful.

**Iowa Code Chapter 202B has a Discriminatory Effect**

27. The effect of Iowa Code Chapter 202B is to discriminate against interstate commerce because the statute favors in-state economic interests over out-of-state business interests.

28. Iowa Code Chapter 202B prevents relatively large out-of-state processors from conducting certain activities in Iowa. Stated more directly, the burdens and harms of the Chapter are directly borne by out-of-state interests, including Tyson, while in-state businesses are free from such damaging regulation.

29. Chapter 202B in essence vests the benefits of production of swine only in certain in-state business including non-processors, qualified processors and independent swine producers.

30. The burden imposed upon out-of-state processors, including Tyson, by the isolationism and protectionism created by Chapter 202B is significant and, unless addressed, forces valuable commerce to flow to other states or other nations.



31. This effect, Iowa's isolation from interstate and international commerce, is discriminatory against interstate commerce and out-of-state processors, including Tyson, and is, therefore, unconstitutional and must be struck down.

WHEREFORE, Tyson respectfully requests that this Court:

A. Declare that Iowa Code Chapter 202B violates the dormant Commerce Clause of the Constitution of the United States;

B. Enjoin the enforcement of Iowa Code Chapter 202B against Tyson;

C. Award Tyson its attorney's fees and costs incurred in this action; and  
Grant such other relief as this Court deems necessary and appropriate.

**COUNT II**  
**Dormant Commerce Clause**  
**(Unreasonable Burden on Interstate Commerce)**

32. The allegations contained in Paragraphs 1 through 31 are incorporated by reference as if fully set forth herein.

33. Iowa Code Chapter 202B also violates the Commerce Clause of the Constitution of the United States because the burdens it imposes upon interstate commerce are clearly excessive in relation to any putative local benefits.

34. Iowa Code Chapter 202B prevents Tyson, and other out-of-state processors, from aligning various aspects of swine production, nutrition and management services, and swine processing in order to facilitate the development of consistent, high quality, and traceable products to meet the demands of consumers and retailers, both national and international.

35. Iowa Code Chapter 202B also prevents Tyson, and other out-of-state processors, from contracting with Iowa producers for the care and feeding of swine in the State of Iowa, removing Tyson and other processors from competition in the business of contract swine production, causing disadvantage and harm to Tyson, other processors, Iowa producers, and, ultimately, consumers of pork products.

36. Conversely, Iowa Code Chapter 202B provides no legitimate benefits to the State of Iowa, Iowa swine producers, or consumers of pork products.

#### **Iowa Code Chapter 202B Harms Competition**

37. The purported purpose of Iowa Code Chapter 202B is to protect competition in the swine market and address anti-competitive conduct by processors. In fact, the means utilized by the State of Iowa to effectuate its purported purpose is to prohibit, as opposed to regulate, certain activities by processors, including Tyson.

38. In the face of its purported purpose, the record surrounding the adoption of Iowa Code Chapter 202B is devoid of any facts supporting a conclusion that meat processors, including Tyson are engaged in a pattern and practice of anti-competitive conduct directed toward Iowa producers.

39. Moreover, any alleged harm sought to be addressed by Iowa Code Chapter 202B is more than adequately addressed by other state and/or federal law regarding anti-competitive behavior undertaken by meat processors.

40. Iowa Code Chapter 202B, in fact, harms competition and fails to take into account the large and ever increasing number of Iowa producers who actively seek out



contract feeding relationships instead of relying solely upon independent production and its significant financial risks.

41. By preventing Tyson and other processors from owning, operating, financing or controlling swine operations within the State of Iowa and from contracting with Iowa producers for the care and feeding of swine, the State of Iowa has removed much needed competition to foster the growth of business by Iowa producers that seek out contract feeding relationships, all to the detriment of Tyson, other processors, Iowa swine producers, and, ultimately, consumers of pork products.

42. Iowa producers cannot be lawfully denied the opportunity to expand their swine operations by entering into competitive contract production relationships with Tyson and other out-of-state processors.

**Iowa Code Chapter 202B is Also Ineffective in Preserving the  
Benefits of Production for Independent Iowa Producers**

43. As discussed above, and as discussed in Smithfield Foods, Inc., Murphy Farms, LLC, and Prestage-Stoecker Farms, Inc. v. Miller, No. 4:02-CV-90324, the record surrounding Chapter 202B reveals that the intended effect and purpose of the Chapter was to retain the financial benefits associated with the production phase of swine, and in particular the finishing phase of swine production, for one segment of independent Iowa producers that do not desire to enter into contract feeding relationships.

44. This concealed goal, while discriminatory and unconstitutional as a result of its preference for local interests, is not accomplished in any event by Iowa Code Chapter 202B. The prohibitions of Chapter 202B are directed at only a few, relatively large, out-of-state processors only and do nothing to address or regulate non-processors

or producer-owned processors that contract with Iowa producers for the care and feeding of swine. Chapter 202B has done nothing to preserve the benefits of production for independent Iowa producers; instead, it has served only to remove processors from competition for the business of those Iowa producers that seek contract feeding relationships.

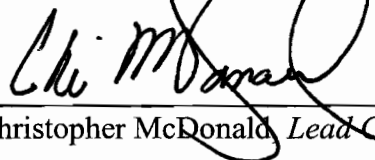
45. The burden imposed upon interstate commerce and out-of-state processors, including Tyson, by the isolationism and protectionism created by Iowa Code Chapter 202B is significant and, unless addressed, forces valuable commerce to flow to other states or other nations. As a result, the impact of this unsupportable regulatory framework is to deny Iowa producers and the State of Iowa valuable and profitable business opportunities.

46. There can be no dispute that the burdens Iowa Code Chapter 202B imposes upon interstate commerce and out-of-state processors, including Tyson, are clearly excessive in relation to its benefit, if any. As a result, Iowa Code Chapter 202B is unconstitutional and must be struck down.

WHEREFORE, Tyson respectfully requests that this Court:

- A. Declare that Iowa Code Chapter 202B violates the dormant Commerce Clause of the Constitution of the United States;
  - B. Enjoin the enforcement of Iowa Code Chapter 202B against Tyson;
  - C. Award Tyson its attorney's fees and costs incurred in this action; and
- Grant such other relief as this Court deems necessary and appropriate.

BELIN LAMSON McCORMICK ZUMBACH  
FLYNN, A Professional Corporation

By   
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